

STATE OF WISCONSIN

PERSONNEL COMMISSION

**MICAH A. ORIEDO,**  
*Complainant,*

v.

**Superintendent, DEPARTMENT OF  
PUBLIC INSTRUCTION, and  
Secretary, DEPARTMENT OF  
EMPLOYMENT RELATIONS, and  
Administrator, DIVISION OF MERIT  
RECRUITMENT AND SELECTION,**  
*Respondents.*

**RULING ON  
RESPONDENT'S  
MOTION TO DISMISS**

Case No. 96-0124-PC-ER

This case involves a complaint of racial discrimination under the Wisconsin Fair Employment Act, where respondent DPI failed to hire complainant for an Education Consultant position, and is before the Commission on respondents DER and DMRS' motion to dismiss them as parties for failure to state a claim upon which relief can be granted.

Respondents DER and DMRS argue that they have only those powers expressly given to them in Chapter 230, Stats., and that nothing in that chapter grants them the power to ensure that other agencies comply with affirmative action plans and fair employment laws. DER argues that while it has authority to establish standards for AA plans, once an agency's plan is approved, it has no power of enforcement. DMRS argues that it is responsible for monitoring and overseeing the state merit recruitment and selection program but has no responsibility to review every decision by the various appointing authorities.

Complainant, in opposing the motion, makes three arguments:

- 1) Respondents did not contest being included as parties in *Balele v. DOA and DMRS*, 88-0190-PC-ER, 1/24/92 and *Balele and Humphrey v. DETF, DMRS and DER*, 87-0047, 0048-PC-ER, 12/3/87;
- 2) DMRS' name, as set out in the statutes, includes the word "selection." Therefore, the argument that its responsibility ends after certification is a misstatement of the law; and
- 3) Even if DER and DMRS have delegated the selection function to DPI, under §230.05(2)(b), Stats., DMRS is still responsible for the monitoring and oversight of the merit recruitment and selection program.

Complainant's arguments with respect to DER and DMRS' authority and responsibility for position appointments were addressed by the Commission in *Balele v. DNR, DER and DMRS*, 95-0029-PC-ER, 6/22/95. In that decision the Commission analyzed the division of authority among the secretary of DER, the administrator of DMRS, and the appointing authority in a state agency, as provided by §230.05, Stats. About the word "selection" the Commission states:

(Complainant) equates the word "selection" in the division's title with the division administrator having the power of appointment. This argument is unpersuasive in light of the specific and explicit statutory grant of power of appointment to the appointing authority by §230.06(1)(b), Stats. . . Whatever scope might arguably be attributed to the word "selection" in isolation, it cannot override this specific grant of appointment power to the appointing authorities.

Applicable to complainant's argument that respondents have monitoring and oversight authority, in *Balele, Id.*, the Commission stated, "(T)here is nothing in the statutes which gives either the DER secretary or the DMRS administrator any control over hiring decisions of the appointing authorities."

Finally, the *Balele* and *Balele/Humphrey* cases, cited by complainant as supporting his argument that DER and DMRS are proper parties, are distinguishable and not applicable. These cases involved allegations of discrimination, which occurred during the recruitment and certification stages of the hiring process. Therefore, DER

and DMRS were proper parties. But here the alleged action took place after certification, during the selection-appointment process. Accordingly, since neither DER nor DMRS has authority or responsibility for this stage of the hiring process, they are not proper parties to this action

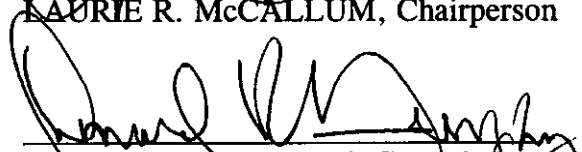
ORDER

The motion of DER and DMRS, to be dismissed as respondents in this case due to complainant's failure to state a claim upon which relief can be granted, is granted and they are removed as respondents from this case.

Dated: March 12, 1997. STATE PERSONNEL COMMISSION

DRM:rjb  
960124Cru13.doc

  
LAURIE R. McCALLUM, Chairperson

  
DONALD R. MURPHY, Commissioner

  
JUDY M. ROGERS, Commissioner